

In the Matter of Merchant Mariner's Document No. Z-62232-D1 and all
other Seaman Documents
Issued to: Mariano V. Rosado

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1299

Mariano V. Rosado

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 7 July 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months on nine months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS UNITED STATES under authority of the document above described, on 25 May 1961, Appellant wrongfully slapped Junior Third Assistant Engineer Kelley.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the seaman allegedly assaulted, the First Assistant Engineer and the Executive Engineer. The Official Logbook entry pertaining to this incident was also received in evidence.

Appellant and four witnesses as to his good character testified in defense. Appellant denied that he struck the engineering officer. Appellant also stated that the Junior Third Assistant became angry because Appellant had shut down a pump; the officer's face was abnormally red from drinking on that day; he grabbed Appellant by the shoulder four or five times before Appellant pushed the officer's hand away; the Junior Third Assistant had been trying to have Appellant discharged for a long time.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved.

FINDINGS OF FACT

On 25 May 1961, Appellant was serving as an oiler on board the United States SS UNITED STATES and acting under authority of his document while the ship was at sea.

On this date, Appellant was standing the 1200 to 1600 watch in the forward auxiliary engine room under Junior Third Assistant Engineer Kelley. Shortly after 1400, this officer ordered Appellant to shut down a certain pump. Appellant objected to the order but carried it out. The Junior Third Assistant was explaining why he wanted the pump secured when Appellant suddenly and unexpectedly slapped the officer on the left side of his face. The First Assistant and then the Executive Engineer arrived on the scene. Both observed that the left side of the Junior Third Assistant's face was flushed compared to the right side. Appellant denied that he slapped the Junior Third Assistant but he was logged as having done so.

The skin on the Junior Third Assistant's face was not broken by the blow and he was not injured. He was given a medical examination at approximately 1500.

There had been no prior difficulty between these two seamen. Both of them had good reputations on the ship - the Junior Third Assistant for five years and Appellant for one year.

Appellant has no prior record during twenty years at sea.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision is not supported by substantial evidence because the Junior Third Assistant did not tell the truth and the other evidence against Appellant is circumstantial. The absence of the medical report in evidence indicates there was no physical attack. Allowing Appellant to stay on the same watch shows that he is innocent. This officer is a trouble maker and was drunk at the time. It was error for the Examiner to state that Appellant's motive "may have been" supplied by his overhearing the Junior Third Assistant's statement about getting rid of Appellant.

It is submitted that the doubt should be resolved in favor of Appellant and that he be found not guilty.

OPINION

The testimony of the Junior Third Assistant, which was accepted by the Examiner as the truth, constitutes substantial evidence in support of the alleged offense. This is corroborated by the testimony of two other engineering officers that they

noticed the flushed condition of his left cheek.

No conclusion can be properly based on the absence of the medical report of the physical examination. No injury resulted and the examination did not take place until about one-half hour after the incident occurred. By that time, it is reasonable to assume that the condition of the Junior Third Assistant's face was normal.

The fact that Appellant's watch was not changed does not justify a conclusion that he is innocent. It would be purely conjectural to reach such a conclusion on the basis of this negative evidence.

Appellant's testimony that the Junior Third Assistant is a trouble maker and was drunk is not supported by the other evidence and was rejected by the Examiner.

The Examiner made the statement that the motive for this offense "may" have resulted from Appellant's misapprehension that he heard the Junior Third Assistant mention his intention to have Appellant discharged. Although the Examiner added that the record did not show the reason for the offense, it is my opinion that this misapprehension was partially the cause for Appellant's conduct. The disagreement as to whether a particular pump should have been shut down seems to have precipitated the action against the Junior Third Assistant Engineer.

It is concluded that there is substantial evidence that Appellant is guilty of the alleged offense. Since this is the required degree of proof, any remaining doubt may not be resolved in favor of Appellant.

ORDER

The order of the Examiner dated at New York, New York, on 7 July 1961, is AFFIRMED.

E. J. Roland
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 27th day of March 1962.